

1 me that is all we are interested in.

2 We are not interested, as I have indicated, in  
3 what discussions took place between the staff and among the  
4 staff as to whether the contacts with Rainbow were ex parte  
5 or not, because that was not communicated to Rainbow. So,  
6 therefore, it could not have affected Rainbow, whether they  
7 acted intentionally or not. It could not have affected  
8 their state of mind or their actions.

9 MR. EISEN: I think that this is \*\*\* #349

10 JUDGE CHACKIN: Well, tell me how? Tell me why  
11 you disagree?

12 MR. EISEN: I believe the facts and circumstances  
13 surrounding the discussions that allegedly took place, that  
14 did take place, also track back to the Commission staff's  
15 willingness to discuss matters with Rainbow. And I know  
16 what you are saying and I understand that. And I think  
17 there is a certain line which you can transcend and end up  
18 in irrelevant matter.

19 But I do think that there are situations here,  
20 possible situations, where the reactions of the Commission  
21 staff, among themselves, were reflected in the contacts that  
22 Press made with the Commission staff. And I think that  
23 there is relevance to state of mind, in Ms. Polivy's state  
24 of mind, or any Press principal's state of mind.

25 JUDGE CHACKIN: From what do you --

1 MR. EISEN: Based on the way she perceived the  
2 Commission staff's reaction to her contacts.

3 JUDGE CHACHKIN: Well, then, she could only  
4 perceive what she knew about.

5 MR. EISEN: Yes.

6 JUDGE CHACHKIN: And the only thing she knew about  
7 was what was communicated to her.

8 MR. EISEN: Yes.

9 JUDGE CHACHKIN: She would not know what took  
10 place among the staff internally.

11 MR. EISEN: Right.

12 JUDGE CHACHKIN: And that, obviously, could not  
13 have affected her actions one way or the other.

14 MR. EISEN: But the way the Commission staff  
15 discussed this internally could have been portrayed to  
16 Ms. Polivy.

17 JUDGE CHACHKIN: Well, I am saying, insofar as the  
18 communications with Ms. Polivy, certainly, that is relevant.  
19 Insofar as the Commission staff discussed these matters  
20 internally and did not communicate this to Ms. Polivy, that  
21 is totally irrelevant. I do not know how that could be  
22 relevant.

23 MR. EISEN: Your Honor, I think if the Commission  
24 staff independently --

25 JUDGE CHACHKIN: Yes.

1 MR. EISEN: -- decided that it was not an ex parte  
2 contact or a violation of an ex parte contact, then that  
3 reflects on the relationship in these telephone calls  
4 between Ms. Polivy and the staff.

5 JUDGE CHACHKIN: I do not understand that.

6 MR. EISEN: Well, it is not easy to articulate,  
7 okay? I understand that. I think that Ms. Polivy, to the  
8 extent that she contacted or any Press principal contacted a  
9 member of the Commission staff, the attitude of the  
10 Commission staff, as reflected by internal discussions that  
11 they may have had with other members of the staff, is  
12 relevant.

13 JUDGE CHACHKIN: As far as I know, the only  
14 contacts, as you say, between most of the members of the  
15 Commission staff and Ms. Polivy, occurred at this meeting.

16 MR. EISEN: No, there were other contacts.

17 JUDGE CHACHKIN: Oh, there were contacts with  
18 individuals.

19 MR. EISEN: Right.

20 JUDGE CHACHKIN: Apparently, there were contacts  
21 with Mr. Gordon.

22 MR. EISEN: Correct.

23 JUDGE CHACHKIN: A number of contacts with  
24 Mr. Gordon. And, certainly, you can argue that is relevant,  
25 the contacts between Mr. Gordon and Ms. Polivy. Then, we

1 have the communication with Ms. Cook and Mr. Stewart.

2 MR. EISEN: Right.

3 JUDGE CHACHKIN: And there, again, it was a  
4 telephone conversation. And then, apparently, there was a  
5 telephone conversation between Ms. Polivy and Mr. Pendarvis.  
6 And, certainly, that is relevant. And then, we have this  
7 meeting which took place. And, besides that, what else is  
8 relevant?

9 MR. EISEN: Well, I think if the Commission  
10 staff --

11 JUDGE CHACHKIN: What is relevant? What, what?

12 MR. EISEN: If the Commission staff believed that  
13 this was not a violation, I think that is relevant with  
14 regard to Ms. Polivy's state of mind?

15 JUDGE CHACHKIN: How could that be relevant to  
16 Ms. Polivy's state of mind?

17 MR. EISEN: Because they discussed things in the  
18 open. There was no --

19 JUDGE CHACHKIN: Now, wait a minute, wait a  
20 minute. The only thing that could affect Ms. Polivy's state  
21 of mind is what was communicated to her by Commission staff.  
22 And the only meeting -- there was one meeting that took  
23 place. Now, what took place between the staff discussions,  
24 between the staff, between Gordon and Pendarvis, or  
25 Pendarvis and Stewart and Kreisman, is irrelevant. It has

1 nothing to do with whether Ms. Polivy or Rainbow  
2 intentionally violated the Rules.

3 MR. EISEN: Well, if the staff believes --

4 JUDGE CHACHKIN: I do not know how, unless by some  
5 form of osmosis, she was able to somehow feel, in the  
6 atmosphere in the room, that there was a feeling on the  
7 staff that this was not ex parte --

8 MR. EISEN: I think that that is relevant.

9 JUDGE CHACHKIN: -- but this is a field we are not  
10 dealing with in this hearing. As far as I know, we are not  
11 dealing with that subject of -- what do you call it? What  
12 is the subject whereby you can detect --

13 MS. FARHAT: Transference?

14 MR. COLE: ESP.

15 MR. EISEN: ESP.

16 JUDGE CHACHKIN: ESP. We are not dealing with ESP  
17 in this.

18 MR. EISEN: No, it is not ESP.

19 JUDGE CHACHKIN: We are dealing with what was  
20 communicated.

21 MR. EISEN: It is not ESP, but it is the attitude  
22 of the Commission staff.

23 JUDGE CHACHKIN: What do you mean by "attitude"?

24 MR. EISEN: It has a bearing on whether Ms. Polivy  
25 reasonably views the --

1 JUDGE CHACHKIN: But the only --

2 MR. EISEN: -- filing under the Rules.

3 JUDGE CHACHKIN: But the only attitude that could  
4 be possibly relevant is what was communicated. Now, if you  
5 want to talk about the body language, that this took place  
6 at the meeting, the way the conversation took place or what  
7 was said -- I mean, if you could describe it in English, I  
8 guess you could testify to that.

9 MR. EISEN: Yeah --

10 JUDGE CHACHKIN: But outside, outside of what  
11 internal discussions took place between the Commission staff  
12 has nothing to do with the actions of Ms. Polivy.

13 MR. EISEN: But that position I think assumes that  
14 there was a completely objective staff in a room without  
15 regard to the Commission's rules which was just simply there  
16 to listen to whatever argument Ms. Polivy and her client  
17 made on the merits of the application.

18 JUDGE CHACHKIN: I'm not saying that.

19 MR. EISEN: And that's not the case.

20 JUDGE CHACHKIN: I'm not saying --

21 MR. EISEN: I mean, there's a background to the  
22 reactions of the staff to Ms. Polivy's contacts and I think  
23 that is relevant because I think it impacts upon her  
24 expected state of mind. Was she -- I'm certainly not  
25 alleging she was led into something, but to the extent that

1 she felt comfortable and to the extent that there was a  
2 reason that the Commission had to make her feel comfortable  
3 I think is relevant to her state of mind.

4 MR. MOSKOWITZ: Your Honor, if I might. This  
5 isn't an ex parte letter that came in over the transom  
6 unsolicited. This is a meeting between two parties, almost  
7 a meeting of minds. And to the extent that it reflects on  
8 the reasonableness of Ms. Polivy's actions or intent, I  
9 think the intent of the other party, the reasonableness of  
10 that intent.

11 JUDGE CHACHKIN: What is the intent of the other  
12 party?

13 MR. MOSKOWITZ: The mere fact of the meeting. In  
14 other words, the fact that they had the meeting, that they  
15 allowed the meeting to just get an admission from the  
16 Commission staff that the ex parte was non-existent, the  
17 violation --

18 MR. BLOCK: Your Honor?

19 MR. EISEN: Furthermore, there can very well be  
20 testimony, and I think it's already reflected in the record  
21 if I may say. We have transcripts of the various IG  
22 reports, investigations and interviews, that there's a real  
23 question as to whether or not the staff believed there was  
24 an ex parte violation here. And to the extent that there  
25 was doubt in the minds of the staff, I think that redounds

1 to the state of mind of Ms. Polivy.

2 JUDGE CHACHKIN: No. In the first place, the  
3 issue reads determine whether Rainbow intentionally violated  
4 Section 1.128 and 1.120 of the Commission's ex parte rules  
5 by soliciting a third party to call the Commission. Now, at  
6 that time there had not been any discussions with the  
7 Commission staff. So we're talking about Polivy getting  
8 Cook or whoever got Cook to make the phone call.

9 MR. EISEN: There had been discussions prior to  
10 that.

11 JUDGE CHACHKIN: And Mr. Gordon.

12 MR. EISEN: Right.

13 JUDGE CHACHKIN: Apparently informed Ms. Polivy  
14 that he could not discuss anything of substance because it  
15 was violation of ex parte.

16 MR. EISEN: That's my understand.

17 JUDGE CHACHKIN: All right. We have that. And  
18 the next question is and by meeting with Commission staff.  
19 So the onus is on why did Ms. Polivy meet with the  
20 Commission staff to discuss the merits? That's the onus  
21 here. and that's what the Commission is concerned about,  
22 not even what took place at this meeting except for the fact  
23 that there was a discussion of the merits. But why did Ms.  
24 Polivy meet with the Commission staff.

25 MR. EISEN: Right. And all I'm saying is that the



1 issue's broad enough --

2 JUDGE CHACHKIN: And certainly what took place at  
3 the meeting could have no bearing on why she met with the  
4 Commission staff. She was the one who arranged the meeting  
5 with the Commission staff.

6 Now, the question is why did she meet with the  
7 Commission staff? Did she meet with the Commission staff  
8 knowing that there was a violation of the ex parte rules by  
9 meeting with the Commission staff? That's what the issue  
10 calls for.

11 And it has nothing to do with whether the staff  
12 mistakenly assume that the ex parte rules were violated or  
13 not. We're dealing with the actions here in arranging a  
14 meeting with the Commission staff and having Ms. Cook call  
15 the Commission staff in light of the fact that the managing  
16 director had written a letter to Ms. Polivy saying that it  
17 was a violation of the ex parte rules and also in light of  
18 Mr. Gordon's warnings that a discussion of merits was a  
19 violation. He couldn't discuss it because of the ex parte  
20 rules. that's what the issue focuses on.

21 MR. EISEN: I agree.

22 JUDGE CHACHKIN: It doesn't focus on discussions  
23 amongst the staff as to whether or not meeting with  
24 Ms. Polivy would be a violation of the ex parte rules. It  
25 focuses on the actions of Rainbow and its principles and

1 agents in arranging these meetings and in taking part in  
2 these meetings.

3 MR. BLOCK: Your Honor, we agree exactly with what  
4 you've said on -- from our point of view, the Commission and  
5 the Court have already decided that there was a violation.  
6 The only question is what did Ms. Polivy know, when did she  
7 know it and what was her intention in going forward? And  
8 that was only, we agree with you, that can only come from a  
9 communication that she received. There's no question that  
10 she met with the staff.

11 So the question the staff was willing to meet with  
12 her is a given. And maybe the staff was wrong. But you're  
13 absolutely right that the focus of this entire proceeding is  
14 on her state of mind of Mr. Ray or the principal. What they  
15 knew and when they knew it is really the only issue here.  
16 The staff communications are a window into her mind to that  
17 extent. We believe we said in our filing that any questions  
18 regarding how the staff handled the matter internally or the  
19 propriety of the staff's conclusions is beyond the scope of  
20 the issue.

21 MR. EISEN: Well, I certainly agree, Your Honor,  
22 that the propriety of the staff's conclusions is not an  
23 issue. However, I think that window can be opened enough to  
24 explore the crux of the Commission staff that were effective  
25 insofar as they relate to Ms. Polivy's contacts. I think

1 the internal discussions and the way they perceive the rule  
2 has a lot to do with the way Ms. Polivy proceeded in this  
3 case.

4 JUDGE CHACHKIN: How does this have any bearing on  
5 the decision to have Ms. Cook contact the Commission? Has  
6 it any bearing on the decision of Ms. Polivy to call  
7 Mr. Stewart and arrange a meeting? How is it any bearing on  
8 the decision of Ms. Polivy to attempt to discuss the merits  
9 if she did with Mr. Stewart? How does it have any bearing  
10 on Mr. Gordon's telling her and Mr. Sandifer telling her  
11 that this follows the ex parte rules? How does this have  
12 any bearing what the staff determined among itself later on  
13 when they agreed to meet?

14 The issue focuses on what Rainbow did and why they  
15 did it. And did they have knowledge of the ex parte rules?  
16 And in light of that, why did they meet and why did they  
17 arrange these meetings and why did they have Ms. Cook call  
18 Mr. Stewart? That's what the issue focuses on.

19 So all this Freedom of Information request dealing  
20 with the actions internally by and between the staff seems  
21 to me totally irrelevant to the issue framed by the  
22 Commission? And that's why it seems to me to coin a phrase  
23 it seems to me the parties are making a Megillah of  
24 something that's which is a very simple issue as the  
25 Commission phrased it.

1           Now, Mr. Cole, if you have any differences of what  
2   I've said, I'd like to hear it.

3           MR. COLE: Your Honor, by and large I agree with  
4   you in separated trial staff with one caveat. And that is  
5   the focus of the discussion this morning has been primarily  
6   on Ms. Polivy's decision to contact Mr. Stewart and  
7   Ms. Polivy's decision to call on Ms. Cook's assistance.

8           I am concerned and hope to explore in some detail  
9   the precise nature of Ms. Cook's conversations with  
10   Mr. Stewart and the impact that that had. Because as we all  
11   know, Ms. Cook was a highly influential senate staffer at  
12   the time and had just withdrawn her name from consideration  
13   as being chairman of this agency. And obviously the impact  
14   of a call from her could reasonably be assumed to have a  
15   greater impact than if Ms. Polivy had called herself or if  
16   Mr. Ray had called himself.

17          And I am concerned about what the possible  
18   ramifications of Ms. Cook calling as opposed to Ms. Polivy  
19   calling. In the first place, because Ms. Cook's call was as  
20   I see the chronology, what set everything in motion as far  
21   as leading up to the meeting. In other words, there was the  
22   denial of the applications. Ms. Polivy apparently contacted  
23   Ms. Cook. Ms. Cook made the first contact with Mr. Stewart.  
24   And lo and behold there was a meeting within a week or  
25   thereabouts.

1 JUDGE CHACHKIN: Well, that's why I assume you're  
2 going to conduct discovery to find out exactly how much the  
3 principles knew and how they participated and all the rest.

4 MR. COLE: That's correct. The caveat I'm saying  
5 is that I would like to reserve the right to explore in some  
6 greater detail the precise content of the conversation  
7 between Stewart and Cook. And to the extent there were  
8 communications between Mr. Stewart and Ms. Kreisman or  
9 Mr. Pendaris or Mr. Gordon or any or all of them concerning  
10 what Ms. Cook told Mr. Stewart, I think that would be  
11 relevant.

12 MR. EISEN: Well, I agree with that.

13 JUDGE CHACHKIN: Well, do you mean what  
14 Mr. Stewart told Mr. Pendarvis and Ms. Kreisman he was told  
15 by Ms. Cook would be second hand hearsay or something? I  
16 don't understand where you're going to go with that. You  
17 certainly could ask Mr. Stewart if there's any question.  
18 Although reading all the material it seems to me the nature  
19 of the conversation which was very brief between Ms. Cook  
20 and Mr. Stewart is not that much in dispute as I understand  
21 it. What we're interested in is why Ms. Cook in the first  
22 place made the call. That's the focus.

23 MR. BLOCK: If I might add, Your Honor, we're  
24 interested in what Ms. Polivy told Ms. Cook, not what  
25 Ms. Cook told -- not what Mr. Stewart told Mr. Ken Darvis

1 about it.

2 JUDGE CHACHKIN: That's right. That's where the  
3 focus is. The actions of Rainbow, its principles, its  
4 agents. That's the focus. And that's why all this, the  
5 huge Freedom of Information question the Commission seems to  
6 me -- so when you say it's going to take a long time to get  
7 the information under FOIA, my question is why do we need  
8 that information if all we're talking, if it's irrelevant in  
9 the first place to the issue framed by the Commission?

10 MR. BLOCK: Your Honor, if I may speak to that for  
11 a second. I must confess lack of familiarity with how we go  
12 about objecting to overboard FOIA under the rules. But  
13 we'll explore that and we'll see if there's a method by  
14 which we can agree or not agree to some of the production.  
15 Any dispute about the relevance we'll bring back to you as  
16 your role as Presiding Officer here.

17 JUDGE CHACHKIN: Well, whatever the Commission  
18 decides to hand over, it seems to me it could be voluminous  
19 data, but I don't see how it's relevant to what took place,  
20 transaction here. But there was correspondence certainly to  
21 Rainbow that's relevant. If it deals with internal matters,  
22 that's not relevant. It didn't bear on the actions of  
23 Rainbow.

24 MR. SILBERMAN: May I make a suggestion, Your  
25 Honor?

1 JUDGE CHACHKIN: Yes.

2 MR. SILBERMAN: The FOIA request was filed on  
3 behalf of Rainbow Broadcasting Company, Rainbow Broadcasting  
4 Limited and Press Broadcasting Company. And I would just  
5 ask if counsel for Rainbow Broadcasting Company and Press  
6 Broadcasting Company would consider narrowing the focus of  
7 the letter to coincide with the Judge's ruling today on the  
8 scope of the issue. And that probably will resolve a lot of  
9 matters. It will probably hasten if I might add the  
10 response of the Commission to responding to the FOIA  
11 request.

12 MR. EISEN: I think that's a good suggestion. We  
13 don't need to prepare to do it.

14 MR. COLE: I have no problem with that, Your  
15 Honor. Except I should point out that I believe the  
16 Commission's initial response to our FOIA request is due  
17 today. And so we may actually have some information now  
18 because it's entirely possible what we're going to get is  
19 there are not documents that the Commission could find. And  
20 if that's the case, then we can move forward secure in the  
21 knowledge that there are no documents.

22 MR. BLOCK: All right. If I may just put a  
23 footnote on it, I'd just check the rules, 1.313, protective  
24 orders covers all procedures through 1.325, which  
25 incorporates, by reference, the FOIA. So we -- the FOIA

1 powers. So we believe that, Your Honor, that's a protective  
2 order power to prevent abuse or overboard discovery under  
3 protective order powers.

4 JUDGE CHACHKIN: Well, apparently there's going to  
5 be a response today. It's a little late, too late for me to  
6 act now.

7 MR. BLOCK: The response also may be, you know, to  
8 ask for more time or whatever.

9 MR. SILBERMAN: Your Honor, at this point, if the  
10 Commission's response today is that the staff needs more  
11 time to put the information together, then might not Rainbow  
12 and Press reconsider and narrow the focus of that? They can  
13 hasten the release of the information?

14 JUDGE CHACHKIN: Well, as Mr. Cole says in all  
15 likelihood they have no documents. So it could be the end  
16 of the matter.

17 MR. COOK: I think in response to Mr. Silberman's  
18 suggestion, certainly Press is willing to take that up with  
19 Rainbow and try to tailor it down as necessary to move this  
20 case along.

21 JUDGE CHACHKIN: All right. Now, as far as  
22 discovery goes as I say of Rainbow under the issues, and  
23 there are also many other issues, as I understand it there  
24 has been motions to produce directed to Rainbow?

25 MR. COOK: That's correct, Your Honor.



1 JUDGE CHACHKIN: And I guess the response is not  
2 due yet.

3 MR. COOK: I think it's due the 12th.

4 JUDGE CHACHKIN: Due the 12th. And then we're  
5 going to have some depositions I assume of Rainbow  
6 principles and also perhaps Rainbow's agents. And perhaps  
7 Ms. Cook. All right. That, that -- so how long will this  
8 all take? What are we talking about here, a month? I mean,  
9 it doesn't seem to me that we're dealing with many deponents  
10 here and possibly five Commission employees I indicate  
11 should not take very long because I'm told, I've indicated  
12 to the parties the limits if I do grant a request, the way  
13 the matter is going to be delimited.

14 MR. EISEN: I'll also just note as I said before  
15 that there were a fairly substantial amount of Rainbow  
16 within partners. I don't know what, I am not getting off on  
17 that tangent again, but that's a number of persons who I  
18 suppose would be potential deponents.

19 JUDGE CHACHKIN: Well, Mr. Cole's going to have to  
20 demonstrate to me that they have relevant testimony. I  
21 mean, I could speculate that I assume these limited partners  
22 have agreed to supply a certain amount of money to Rainbow  
23 to go forward with construction and the operation of the  
24 station, to provide instead of the use of debt financing,  
25 equity financing.

1           And if that's the case, there certainly will be no  
2   need to depose all these individuals. I don't know if one  
3   has agreed to provide more money than the other or it's just  
4   equal shares. I mean, but again I'm just speculating. I  
5   don't know what the facts are. But again, Rainbow at this  
6   stage is only to get their names, identify who they are and  
7   we'll have to see where we go from there whether I allow to  
8   depose them or not.

9           I mean, if they're all going to, have the same  
10   testimony, namely that they agree to provide X number of  
11   dollars, there'd be no basis to pose all 36 of them or  
12   whatever amount there is. But we'll just have to wait and  
13   see what the situation is.

14           MR. SILBERMAN: Your Honor, on that subject let me  
15   just give you a preview of kind of what I have in mind. We  
16   have asked for a number of financially related documents in  
17   our document production request that should give us some  
18   idea as to when the various limited partners came into the  
19   partnership. As you know, there was a financial  
20   misrepresentation issue which relates to representations  
21   made by Rainbow during the course of 1991 concerning its  
22   financial qualifications.

23           What we are interested in finding out is when the  
24   limited partners actually have been contacted, were  
25   committed, were signed up to provide funds. Because if

1 Rainbow was telling the Commission it was relying on equity  
2 funding in 1991, but the people who actually provided the  
3 money didn't even learn of Rainbow's existence on the face  
4 of the planet until 1993, that certainly raises the question  
5 as to whether or not Rainbow's representations were truthful  
6 in 1991.

7 That's the gist of where we're looking to go and  
8 that's why we may or may not need to depose however many  
9 limited partners there are to find out when it was they came  
10 in, what it was they were told, what it was they agreed to  
11 do and when. But as I say, in response to the document  
12 production request, we may have a much better handle on what  
13 the scope of discovery is going to be.

14 JUDGE CHACHKIN: Mr. Eisen, I guess you don't have  
15 to make a decision. Are you going to pose this question of  
16 financial information or are you just haven't decided yet?

17 MR. EISEN: I have problems with both the trial  
18 staff's request for documents and with Press's I think  
19 there's a possibility that I may discuss with both those  
20 parties problems I have prior to ten day expiration. Maybe  
21 we can resolve it informally.

22 JUDGE CHACHKIN: Well, certainly that would be  
23 beneficial if you could. Well, I was hoping the parties  
24 today would come -- would give me a trial schedule  
25 because -- and if there is delays, obviously we may have to

1 modify the trial schedule. But I'd like to have a blueprint  
2 as to how we're proceeding so at least the parties are aware  
3 that this is not something that's ongoing, can go on  
4 forever, that there is limitations.

5 And so I'm prepared today to establish a trial  
6 schedule and it seems to me what we're looking at here is  
7 late May and possibly early June for the hearing. But those  
8 dates I feel fairly comfortable being able to accomplish all  
9 the discovery we need and still be ready to go to hearing in  
10 late May or early June.

11 MR. SILBERMAN: May we go off the record, Your  
12 Honor?

13 JUDGE CHACHKIN: Yes, we can go off the record.

14 (Whereupon, a brief recess was taken.)

15 JUDGE CHACHKIN: The following procedural schedule  
16 has been established for trial of this case and these are  
17 the dates. Discovery will be completed by May 31st, 1996.  
18 On June 4th, 1996, the parties putting in a direct case will  
19 exchange their exhibits and identify those witnesses who  
20 will testify orally and also shall include a brief summary  
21 of the nature of their testimony? June 11th, 1996 is a date  
22 for notification of witnesses for cross examination. There  
23 need not be any notification of those witnesses previously  
24 identified as providing oral testimony.

25 And the hearing will commence on June 18th, 1996

1 at 10:00 a.m. in the Commission's Washington, D.C. offices.  
2 And I might indicate to the parties that while the first day  
3 we will start at 10:00, in all likelihood all future dates  
4 will begin at 9:00 a.m.

5 One other thing, Mr. Eisen, in my order I ruled  
6 that Rainbow Broadcasting Limited is not a party since the  
7 Commission has not named it a party and there's been no  
8 request for intervention under the rules. Do you know  
9 whether RBL intends to file a motion to intervene?

10 MR. EISEN: I don't know for sure. I think  
11 there's a possibility that there may be a filing there.

12 JUDGE CHACHKIN: From what I can tell from what  
13 the parties have indicated up to now, there doesn't appear  
14 to be any opposition to such intervention. Am I reading  
15 correctly --

16 MR. COOK: That's correct, Your Honor.

17 JUDGE CHACHKIN: -- the minds of the parties?

18 MR. SILBERMAN: That's correct, Your Honor. We  
19 have no objection to RBL being named the party to proceed.

20 JUDGE CHACHKIN: But just since I have no other  
21 choice as I indicated since the rules require that a motion  
22 of intervention be filed.

23 MR. EISEN: And this would be intervention under  
24 what, subset E?

25 JUDGE CHACHKIN: Well, the rules deal with a

1 situation where a party is not, where someone has not been  
2 named as a party and does not file a request to intervene  
3 within 30 days there is a provision dealing where the party  
4 can still request intervention. And there's been an  
5 indication by the parties that there won't be any  
6 objections. So in all likelihood it would be granted, but  
7 the rules do have to be complied with. So if Ms. Polivy  
8 intends to participate in this hearing, she should file this  
9 motion as soon as she can.

10 MR. EISEN: She'll be delighted to hear that and  
11 I'll tell her --

12 MR. SILBERMAN: Your Honor?

13 JUDGE CHACHKIN: Yes.

14 MR. SILBERMAN: I would like to note for the  
15 record please that in attendance this morning throughout the  
16 proceedings was Mr. Charles Dziedzic who is counsel for  
17 various proposed deponents.

18 JUDGE CHACHKIN: All right. Now, I still expect  
19 the parties to reach as many stipulations as they can. It  
20 seems to me lots of matters can be stipulated to. And  
21 proceed hopefully in a non-adversarial fashion as much as  
22 possible in getting this hearing underway. Anything else  
23 the parties have to state?

24 MR. COOK: One last thing, Your Honor.

25 JUDGE CHACHKIN: Yes.

1           MR. COOK: Mr. Eisen served his document  
2     production request on Press, but it appears to be styled in  
3     what I will characterize the old fashioned way of asking  
4     Your Honor to issue an order. And I've told Mr. Eisen this  
5     morning that I'm perfectly prepared to treat it as a new  
6     fashioned one and save Your Honor the trouble of issuing an  
7     order. So I intend to respond to that in a timely fashion  
8     which is, what, the 12th I believe?

9           MR. EISEN: Well -- day. Whatever.

10          MR. COOK: Okay.

11          JUDGE CHACHKIN: All right. That's the new  
12     fashioned way that the motions are filed directly with the  
13     party, not the presiding judge.

14          MR. EISEN: Well, actually the rule is permissive.  
15     It says that motions need not be filed with the Presiding  
16     Officer. It doesn't say you can't.

17          JUDGE CHACHKIN: Well, you can file a motion with  
18     me, but to the attention of him. You can send me a copy if  
19     you want, but I don't act on it. All right. Anything  
20     further? I remain available to parties who need me for any  
21     conferences to in any way expedite this proceeding. But if  
22     not, we're in recess now until June 18th.

23                 (Whereupon, a brief recess was taken.)

24          JUDGE CHACHKIN: Back on the record. I noticed  
25     there was a request made that if depositions of Commission

1 employees are taken that it should be taken before me to  
2 avoid any hopefully, to void any disputes as to the nature  
3 of the testimony. It would seem to me I've made clear today  
4 what I consider to be relevant. So it doesn't seem to have  
5 necessary for me to preside over deposition sessions. But,  
6 of course, as questions come up, parties can call me at my  
7 office and I'll give them a quick ruling. But I think I  
8 told the parties what I consider to be relevant. So that it  
9 shouldn't be necessary. There shouldn't be too many  
10 disputes about questions asked. And I don't see it's  
11 necessary for me to preside.

12 MR. BLOCK: We appreciate Your Honor's candid  
13 discussion of relevance.

14 JUDGE CHACHKIN: All right. Then we're now  
15 recessed.

16 (Whereupon, at 10:06 a.m. the hearing was  
17 adjourned.)

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**REPORTER'S CERTIFICATE**

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**CASE TITLE:** Rainbow Broadcasting Company  
**HEARING DATE:** March 7, 1996  
**LOCATION:** Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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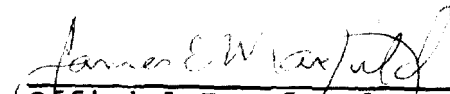
  
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